

**Notice of Allowability****Application No.**

09/901,870

**Applicant(s)**

OLMO, HAROLD P.

**Examiner**

Anne Marie Grunberg

**Art Unit**

1661

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 8/05/03.
2. ☒ The allowed claim(s) is/are 1.
3. ☐ The drawings filed on 07 March 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.


Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- 1 ☐ Notice of References Cited (PTO-892)
- 3 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 5 ☐ Information Disclosure Statements (PTO-1449), Paper No. \_\_\_\_\_.
- 7 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

- 2 ☐ Notice of Informal Patent Application (PTO-152)
- 4 ☐ Interview Summary (PTO-413), Paper No. \_\_\_\_\_.
- 6 ☒ Examiner's Amendment/Comment
- 8 ☐ Examiner's Statement of Reasons for Allowance
- 9 ☐ Other

  
BRUCE R. CAMPEL, PH.D.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

## **DETAILED ACTION**

### **Examiner's Amendment**

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

The original loose 3.5" x 5" photos have been canceled and replaced by photos that have been accepted by an official draftsman. The replacement photos have been labeled, "FIG. 1", "FIG. 2" and "FIG. 3" in accordance with the inventor's directive.

### **Examiner's Comment**

2. The first Office Action (reiterated in the Final), paper #2, dated 10/02/02, required a new declaration (PTO/SB/03). The declaration was defective because it did not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration. A new plant patent declaration was required. Applicant was reminded that upon submission of a new declaration, reference to any amendments was required. For Applicant's convenience, it was suggested that the plant patent declaration form located in Chapter 1600 of the MPEP be used.

Although Applicant attempted to overcome this deficiency, the new declaration is deficient because it does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claim, as amended by any amendment specifically referred to in the oath or declaration. As a result, Applicant must submit a substitute declaration or oath in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date. See MPEP §§ 602.01 and 602.02.

The substitute oath or declaration must be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability" (PTO-37). Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136. Failure to timely file the substitute declaration (or oath) will result in **ABANDONMENT** of the application. The transmittal letter accompanying the declaration (or oath) should indicate the following in the upper right hand corner: Issue Batch Number, date of the "Notice of Allowance" (PTOL-85), and application number.

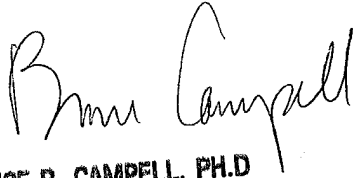
2. Any inquiry concerning this or any previous communication from the examiner should be directed to Anne Marie Grünberg whose telephone number is (703) 305-0805. The Examiner can normally be reached Monday through Thursday from 7:30 am to 5:00 pm. The Examiner can also be reached on alternate Fridays from 7:30 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (703) 308-4205. The fax phone number for the group is (703) 305-3014.

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Any inquiry of a general nature or relating to the status of this application should be directed to THE MATRIX CUSTOMER SERVICE CENTER whose telephone number is (703) 308-0196.

  
BRUCE R. CAMPELL, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600